

This letter discusses sales tax on membership fees and magazines, shipping and handling charges. See 86 Ill. Adm. Code Sections 130.2105 and 130.415. (This is a GIL.)

December 11, 1998

Dear Ms. Xxxxx:

This letter is in response to your letter dated September 1, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY sell nutritional, dietary, and skin care products through a multi-level network of independent distributors. We are considered an 'MLM' or multi-level marketer such as Amway, Avon, etc. Our physical locaiton is in CITY/STATE. We charge tax based on where we ship to. COMPANY files one Illinois state sales/use tax return rather than each distributor filing areturn with Illinois.

1). Distributors will renew their status annually. The annual renewal fee of \$20.00 will be due on the anniversary of their enrollment date. This fee will entitle the distributor to a one-year subscription to a; monthly newsletter, as well as distributor support services.

2). We will charge the distributors a shipping and handling charge. The charge will be based on the type of purchase -- cans or cases of product. The cans of product ordered will have a 9.5 percent shipping and handling charge with a minimum charge of \$4.50. The cases of product ordered will have a 7.5 percent shipping and handling charge. Orders will be shipped UPS ground. If the order is lost in transit, the distributor will contact COMPANY and we will contact UPS to file a claim.

We need a letter ruling or binding opinion as to whether the above are taxable or exempt based on your state's tax laws, regulations, etc. A response in letter form is preferred. My fax number is ##### or my e-mail address is #####.

If you need additional information for your determination of taxability, please call me at #####. Thank you.

Generally, the Department does not consider membership fees to be gross receipts from the sale of tangible personal property. Rather, membership fees are an intangible, which is not subject to Retailers' Occupation Tax (sales tax). This is the case when the sale of membership rights does not include the transfer of tangible personal property. When membership fees represent the sale of tangible personal property, they are subject to tax.

Please be advised that publications which qualify as periodicals are not subject to tax under the newsprint and ink exemption. See 86 Ill. Adm. Code 130.2105, enclosed. In order to be considered a periodical, a publication must be published at least two times a year and must possess at least one other characteristic of a magazine. Such characteristics could include, for instance, whether it can be subscribed to or contains general advertising or has the form of a magazine.

In general, shipping and handling or delivery charges are includable in the gross receipts subject to tax unless the buyer and seller agree upon such charges separately from the selling price of the tangible personal property which is sold. In addition, such charges must be reflective of the costs of shipping and delivery. To the extent that these charges exceed the costs of shipping, they are subject to tax. See 86 Ill. Adm. Code 130.415, enclosed. As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always includable in gross charges subject to tax. See the enclosed copy of 86 Ill. Adm. Code 130.410. However, when such charges are stated in combination with shipping charges, they will be nontaxable to the extent the above tests are met.

The best evidence that shipping and handling or freight charges have been contracted for separately from the selling price is a separate contract for shipping and handling or freight charges. A separate listing of freight charges on an invoice, by itself, is insufficient. However, documentation that demonstrates that purchasers had the option of taking delivery of the property at the sellers' location for the agreed purchase price, or having delivery made by the seller for the agreed purchase price plus an ascertained or ascertainable delivery charge, will suffice.

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. See subsection (d) of Section 130.415. If the retailer charges a customer shipping and handling or delivery charges that exceed the retailer's cost of providing the transportation or delivery the excess amount is subject to tax.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Encl.